

NO. 49513-9

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

IN RE THE DEPENDENCY OF I.F.,

Minor Child.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent,

v.

M.F.,

Appellant.

AMENDED RESPONDENT'S BRIEF

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I. INTRODUCTION

M.F. is I.F.'s legally presumed father because the child was born during M.F.'s marriage to I.F.'s mother. To avoid unintended or absurd consequences, this Court must harmonize the definition of "parent" set forth in RCW 13.04.011(5) with the definitions of parent found in child welfare, paternity, and adoption statutes that include a presumed father. Without such harmonization for dependency proceedings, the Court cannot execute the legislature's intent or protect a parent's fundamental liberty interest in his or her child.

The juvenile court did not abuse its discretion in denying M.F.'s motion for DNA testing. The court advised M.F. that if he wished to disestablish his paternity, there is a clear statutory procedure he must follow that is established in Chapter 26.26 RCW, the Uniform Parentage Act. M.F.'s failure to act did not result in a due process violation, and the Court should affirm the finding of dependency.

II. ISSUES

- A. **By statute, a husband is the presumed father of a child born during a marriage and this presumption can only be rebutted in a parentage action. Should this statutory requirement be harmonized with dependency statutes to include presumed parents where the definition of parent in dependency statutes is a biological or adoptive parent?**

- B. Did the juvenile court properly exercise its discretion in denying M.F.'s motion for DNA testing, and does the existing statutory procedure for disestablishment of paternity protect M.F.'s due process rights?**

III. STATEMENT OF FACTS

I.F., born September 12, 2008, is the eight-year-old daughter of the mother D.C. CP 59-60. M.F. is I.F.'s presumed father. CP 71 (Unchallenged FF 2.2.1). D.C. and M.F. married on February 25, 2000, and I.F. was born during their marriage. CP 93, 151; RP at 15-16. M.F. signed an Affidavit of Paternity for I.F. CP 151. The couple had two other children: M.F. Jr., born November 23, 2000, and C.F., born April 19, 2006. CP 60; RP at 17.

1. The Department's involvement with the family

In May 2010, the Department received a report alleging that D.C.'s live-in boyfriend was sexually abusing then four-year-old C.F. CP 60. The mother took C.F. to a hospital emergency room, the child did not disclose anything inappropriate, and the mother reported that her boyfriend moved out of the family home. CP 60. An investigation concluded the allegation was unfounded. CP 60.

Three years later, in June 2013, the Department received a report indicating that the same man, now D.C.'s husband, physically assaulted

D.C.'s older son.¹ CP 61. The husband was arrested, served jail time, and the family was encouraged to work with his probation officer. CP 61.

In January 2016, the Department received a report alleging C.F. and I.F. were physically and sexually abused by the mother's husband. CP 61. C.F. disclosed he took her to the parents' bedroom when the mother left for work, pulled down her pants, and touched her pelvic area. CP 61. D.C. kicked him out of the house, he was criminally charged with child molestation, D.C. agreed to have no contact with him, and she agreed to seek mental health services for the children CP 61.

Three months later, in April 2016, the Department received a report alleging that D.C. failed to address her children's mental health needs following the sexual abuse. CP 61. M.F., Jr. attempted suicide on multiple occasions due to stress in the mother's home, prompting his father M.F. to seek custody of the three children. RP at 20; CP 61; Ex. 3-4. The final Parenting Plan placed M.F., Jr. and C.F. in their father's care where they have lived since April 2016. CP 61; Ex. 5.

The two children disclosed that their mother D.C. remained in contact with her husband, helping him move to California. CP 61. In May 2016, D.C. was arrested for helping him evade authorities. CP 61. She

¹ M.F. is not this child's father; the child was born in 1998, before the marriage of D.C. and M.F. CP 60-61.

admitted to engaging in regular phone contact with her husband, allowing the children to have “Face Time” phone contact with him, and helping him move out of state. CP 61. At the time the Dependency Petition was filed, D.C. was incarcerated in the Clark County Jail, and I.F. was placed in protective custody. CP 61-62.

2. D.C. and M.F.’s marriage, divorce, and parenting plan

D.C. and M.F. married in February 2000. CP 93. During the marriage, three children, M.F., Jr., C.F. and I.F., were born. CP 151. In March 2011, D.C. filed a Petition for Dissolution of Marriage, and M.F. signed a joinder. CP 151. Their divorce decree and a final parenting plan were entered on June 23, 2011. CP 151. The petition and final parenting plan designated three children of the marriage, M.F., Jr., C.F., and I.F., and provided the children would spend all residential time with their mother. CP 151.

In April 2016, M.F. filed a petition to amend the parenting plan and sought a temporary order placing M.F., Jr., I.F., and C.F. in his care. Ex. 2, 4. M.F. explained he sought custody after D.C. started having “a lot of problems.” RP at 18. A final parenting plan was entered in May 2016, placing M.F., Jr. and C.F. in their father’s care. CP 152; Ex. 5. At the time, M.F. attempted to gain custody of I.F. as well. RP at 18; Ex. 1. He obtained an order waiving the juvenile court’s exclusive jurisdiction to pursue a

parenting plan with respect to I.F.'s interests because he was "legally her father," and he wanted to take responsibility for her. CP 28-29; Ex. 1. However, after I.F. was placed in licensed foster care, M.F. did not pursue the action. RP at 20.

3. I.F.'s special needs and M.F.'s low level of engagement

I.F. had special needs and required someone to speak for her because she was "selectively mute." RP at 20, 40. Due to incontinence, she suffered "accidents." RP at 21, 40. I.F. participated in weekly counseling to address her selective muteness and because she was in the home when her older sister was sexually abused. RP at 41. Though I.F. did not call M.F. "father," he was involved in I.F.'s life until she was four years old and intermittently after that time. RP at 23, 36; CP 97. M.F. recognized that he is I.F.'s legal father. Ex. 1.

Department social worker Julia Kornyushin-Anderson described I.F. as a "very interesting little girl," and quiet, but observant. RP at 33. Ms. Kornyushin-Anderson commented that I.F. "has interests and dreams that she will share with you and they're age appropriate. I did not notice any delays." RP at 33. She found it odd that despite M.F.'s involvement in the first half of I.F.'s life, the child had "absolutely no relationship" with M.F. RP at 36. Ms. Kornyushin-Anderson concluded this posed a safety risk to I.F. because she had no bond or attachment with M.F. RP at 36.

Ms. Korniyushin-Anderson noted that M.F. demonstrated a very low level of engagement with the Department and did not want a relationship with I.F. RP at 37, 43. When the Department prepared an amended dependency petition and attempted to make arrangements to deliver it to M.F., he told Ms. Korniyushin-Anderson that unless she had documentation that would allow him to sign a relinquishment or to stop child support for I.F., he no longer wanted to cooperate. RP at 38-39.

4. M.F.'s motion for DNA testing

On August 9, 2016, M.F. filed a motion for DNA testing. CP 92. The Department objected to the motion, arguing that the juvenile court's limited jurisdiction over child custody proceedings does not include paternity actions, that paternity disestablishment is governed by Chapter 26.26 RCW, and that the proper forum for such a motion is family court. CP 97-101. The juvenile court denied M.F.'s motion for a DNA test, ruling:

DNA testing for purposes of determining parentage is within the purview of the family court, not dependency court. Until such time that M.F. is disestablished as the presumed biological father, he is [a] necessary party under RCW 13.04.011(5) and Chapter 13.34.

CP 156. M.F. filed a motion seeking discretionary review of this order. CP 179.

5. Dependency fact finding hearing

On September 22, 2016, the juvenile court held a dependency fact finding hearing with respect to M.F.'s interests. RP at 4, 7. The court heard testimony from M.F., M.F.'s girlfriend, and the Department social worker, Julia Kornyushin-Anderson. RP at II. Again, M.F. argued that because he is not I.F.'s biological or adoptive father, he is not a parent as defined in RCW 13.04.011(5), and the trial court could not enter a dependency order with respect to his interests. RP at 53-54. In an oral ruling, the trial court noted that since I.F. was born during M.F.'s marriage to D.C., "I have a presumed father. He's the legal father of this...child. [Chapter] 13.34 [RCW] applies to him." RP at 55. The trial judge noted the importance of finality, stating: "We need finality. And that's why there is a presumption that if you're married to the parent there's a marriage contract...the contract says you're the father of any kids born during the marriage." RP at 64.

The juvenile court entered an Order of Dependency, finding I.F. to be dependent pursuant to RCW 13.34.030(6)(c) because she has no parent capable of adequately caring for her, such that she is in circumstances which constitute a danger to her psychological or physical development. RP at 57; CP 302. M.F. timely filed this appeal. CP 312. His motion for discretionary review of the order denying DNA testing and his appeal of the dependency order were consolidated for purposes of appellate review.

IV. ARGUMENT

In any dependency proceeding initiated by the Department, the state is required to prove, by a preponderance of the evidence, that the child meets the statutory definition of a dependent child. RCW 13.34.110; *In re Dependency of M.P.*, 76 Wn. App. 87, 90, 882 P.2d 1180 (1994). RCW 13.34.030(6) defines a dependent child as one who:

- (a) Has been abandoned;
- (b) Is abused or neglected as defined in Chapter 26.44 RCW by a person legally responsible for the care of the child;
- (c) Has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or
- (d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

The goal of a dependency hearing is to determine the child's welfare and best interests. *In re Dependency of C.M.*, 118 Wn. App. 643, 648, 78 P.3d 191 (2003). In this case, an amended dependency petition was filed June 29, 2016, alleging I.F. to be a dependent child pursuant to RCW 13.34.030(6)(c) because she had "no parent, guardian or custodian capable of adequately caring for" her. CP 60.

I.F.'s presumed father M.F. argues that I.F. cannot be found to be dependent with respect to his interests because he is not a father as defined in RCW 13.04.011(5). Appellant's Brief at 5. That is, he argues he is not

her biological or adoptive father and, therefore, the dependency must be dismissed with respect to his interests. Appellant's Brief at 5. He further argues he was denied due process because the dependency statutes do not provide him with a mechanism to disestablish his paternity. Appellant's Brief at 6. These arguments are without merit.

M.F. is I.F.'s presumed father. When an individual is married to a child's mother when a child is born, this gives rise to a presumption of paternity. RCW 26.26.116(1)(a). M.F.'s interpretation of RCW 13.04.011(5), which defines a parent for purposes of a dependency statute, must be harmonized with other child welfare, paternity, and adoption statutes and considered in light of the intent and purpose of the dependency laws to avoid absurd and unintended consequences.

Paternity statutes protect M.F.'s due process rights by providing a clear procedure by which he can seek disestablishment of his paternity. *See* RCW 26.26.500-.630. M.F. chose not to pursue this action. An avenue is available for M.F. to contest paternity, there is no due process violation, and M.F.'s challenges to the trial court's dependency order should fail.

A. RCW 13.04.011(5) Must Be Harmonized with Other Statutes to Avoid Absurd and Unintended Consequences

RCW 13.04.011(5) defines the term "parent" or "parents" for purposes of Chapter 13.34 RCW to mean "the biological or adoptive

parents of a child unless the legal rights of that person have been terminated by judicial proceedings.” RCW 13.04.011(5). M.F. argues that because he is not I.F.’s biological or adoptive father, he “does not qualify” as I.F.’s parent under this statute and, therefore, the dependency order must be reversed. Appellant’s Brief at 5. But because he is legally presumed to be the father, and he has not pursued the exclusive means of disestablishing paternity, his argument fails.

I.F. was born during M.F.’s marriage to I.F.’s mother. CP 93, 151; RP at 15-16. Under Washington’s Uniform Parentage Act, Chapter 26.26 RCW, when an individual is married to a child’s mother when a child is born, he or she is presumed to be the child’s parent. RCW 26.26.116(1)(a). This presumption “may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630.” RCW 26.26.116(3). A court order, not simply genetic testing, must overcome the presumption. *In re Marriage of Thier*, 67 Wn. App. 940, 947, 841 P.2d 794 (1992).

M.F. is presumed to be I.F.’s father, and there is no evidence of an order disestablishing his paternity. In the absence of such an order, the presumed father is still the father of the child. *In re Marriage of Wendy M.*, 92 Wn. App. 430, 440, 962 P.2d 130 (1998).

Although M.F. is I.F.’s presumed father and is her parent for purposes of the paternity statutes, he argues he does not “qualify” as a

parent for purposes of a juvenile dependency proceeding. Appellant's Brief at 5. The dissolution decree identifies I.F. as a child of the marriage, M.F. is ordered to pay child support, and he sought court permission to pursue entry of a custody order with respect to I.F. RP 39; CP 28-29; Ex. 2, 4. Nevertheless, he argues he should be dismissed from this dependency case and deemed not to be I.F.'s father. This would result in legal chaos, in which M.F. is considered I.F.'s parent for some purposes but not others, and it would severely impair the Department's ability to protect children. To prevent such an absurd result, RCW 13.04.011(5) must be harmonized with related statutes to avoid such unintended and ludicrous results for both parents and children.

1. Statutes should be read together

Appellate courts review statutory interpretation questions de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent. *Jametsky*, 179 Wn.2d at 762. To determine legislative intent, the court should look first to the plain language of the statute. *Jametsky*, 179 Wn.2d at 762. This Court should consider "the language of the provision in question, the context of the statute in which the provision is found, and related statutes." *Lowy v. PeaceHealth*, 174 Wn.2d 769, 779, 280 P.3d 1078 (2012). After this inquiry, if the statute remains susceptible

to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids in construction. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002). “Unlikely, absurd or strained consequences resulting from a literal reading should be avoided.” *State v. McDougal*, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992).

“Statutes are to be read together, whenever possible, to achieve a ‘harmonious total statutory scheme ...which maintains the integrity of the respective statutes.’” *State ex rel. Peninsula Neighborhood Ass’n v. Dep’t of Transportation*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000) (alteration in original) (quoting *Employco Pers. Servs., Inc. v. City of Seattle*, 117 Wn.2d 606, 614, 817 P.2d 1373 (1991)).

2. Harmonization of RCW 13.04.011(5) is consistent with the intent of dependency proceedings and a parent’s constitutional liberty interest in parenting

Without harmonization of the statute defining a “parent” for purposes of dependency and the statutes addressing a presumed father, the courts cannot execute the intent of dependency proceedings. The paramount goal of child welfare legislation is to reunite a child with her legal parents, if reasonably possible. *In re Dependency of J.H.*, 117 Wn.2d 460, 476, 815 P.2d 1380 (1991); *In re Custody of C.C.M.*, 149 Wn. App. 184, 202 P.3d 971 (2009). The legislature declared its intent for all of Chapter 13.34 RCW stating:

[T]hat the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.

RCW 13.34.020.

A parent has a fundamental liberty and property interest in the care and custody of his child. U.S. Const. amends. V, XIV; Wash. Const. art., I § 3; *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). This liberty interest is not limited to a category of parent, but exists whether one is a presumed father or an adjudicated parent. "The due process clause of the Fourteenth Amendment protects a parent's right to the custody, care, and companionship of [his or] her children." *In re Welfare of Key*, 119 Wn.2d 600, 609, 836 P.2d 200 (1992) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)).

It defies logic to suggest that a presumed father could have rights to and responsibilities for a child under Chapter 26.26 RCW, but be immune to any actions under Chapter 13.34 RCW. If this were the case, the Department would be unable to protect a child in the custody of a presumed parent. The legislature could not have intended to create a class

of parent able to abuse, neglect, or mistreat a child with no civil recourse under Chapter 13.34 RCW. Equally concerning, at the outset of a case, the Department would be unable to offer necessary, reasonably available services to help presumed parents get an early start on remedying their identified parental deficiencies to reunite with their child.

Similarly, allowing presumed parents to challenge paternity in a dependency action is contrary to statute and would lead to absurd and inconsistent results. The presumed parent statute explicitly states the exclusive means for rebutting the presumption - the specific proceedings to do so. RCW 26.26.116(3). Thus, allowing parents to challenge paternity in a dependency proceeding would conflict with this statute. And it would lead to conflicting, absurd results. Parents would be considered a parent for some purposes, like child support and custody, but not for dependency proceedings. Instead, by continuing the presumption of paternity in dependency proceedings, and heeding the statutory limitation of the exclusive means of rebutting that presumption, the trial court gave effect to both statutes and avoided absurd results.

Given that a child has an interest in a speedy resolution of a dependency proceeding, and a parent has a liberty interest in the care and custody of his child, both legislative intent and constitutional mandates are served by harmonizing the statutes in question. Delaying a case simply to

require a presumed parent to complete an adjudication to prove paternity would unnecessarily delay the dependency proceeding and conflict with the child's right to speedy permanency. Here, the juvenile court harmonized the statutes and acknowledged that M.F., as the presumed father, fell within the court's authority for purposes of a child welfare proceeding.

3. Harmonization of RCW 13.04.011(5) is consistent with at-risk-youth and child in need of services statutes

Giving effect to the presumption of paternity for child welfare proceedings under RCW 13.34 is also consistent with other child welfare statutes. For example, when a family is in conflict and experiencing problems with an at-risk youth or a child in need of services, the family may request reconciliation services from the Department. RCW 13.32A.040. The services are provided to alleviate situations presenting a serious and imminent threat to the health or stability of the child or family and to maintain families intact, when possible. RCW 13.32A.040.

A parent, for purposes of the at-risk and child in need of services statutes, is defined as the parent or parents "who have the legal right to custody of the child." RCW 13.32A.030(14). Given M.F. is I.F.'s presumed father and is recognized as her parent until that status is rebutted or confirmed in a judicial proceeding, he has a legal right to custody of I.F.

RCW 26.26.011(21). Accordingly, M.F. would be able to seek at-risk youth or child in need of services assistance on her behalf. It would be an absurd result to have a statutory system where a presumed father with a child in conflict or at risk could seek help and fall within the juvenile court's justice system, but the presumed father in a dependency case would be dismissed from the case.

4. Harmonization of RCW 13.04.011(5) is consistent with the adoption statutes

When seeking termination of parental rights under the adoption statutes set forth in Chapter 26.33 RCW, a petition for termination of the parent-child relationship may be filed against a parent or an alleged father. RCW 26.33.100(1). The adoption statutes define a parent as “the natural or adoptive...father of a child, including a presumed father under chapter 26.26 RCW.” RCW 26.33.020(8). If a termination is filed under RCW 26.33.100, a presumed father has the right to be represented by an attorney. RCW 26.33.110(3)(b).

First, this statute demonstrates that the legislature includes presumed fathers within the group of “natural or adoptive father.” Thus, it would make sense to include presumed father within the phrase “biological or adoptive parent.” Second, accepting M.F.'s argument would lead to

absurd results in which a presumed father would have more rights in a private termination of parental rights than in one initiated by the state

Since M.F. argues he is not a parent as defined in RCW 13.04.011(5) for purposes of a dependency proceeding, and under his logic, a dependency order cannot be entered against him, he would not have the right to an attorney. RCW 13.34.090(2) (at all stages of a dependency proceeding a parent has the right to be represented by counsel). Should the case proceed to termination of parental rights in the dependency case, the Department would have had no obligation to provide reasonably available services to remedy his identified deficiencies, he would not be a party, and he would not have an attorney appointed to represent his interests. RCW 13.34.090; RCW 13.34.180(1).

Following M.F.'s argument, a presumed father would have more rights, including the right to appointed counsel, if a termination was filed by a private agency under Chapter 26.33 RCW than if the termination was filed by the Department under Chapter 13.34 RCW. It is inconsistent—and ludicrous—to have a statutory scheme that provides less due process to state-initiated dependency and termination matters and more due process and inclusion in a private adoption case. The parent's significant liberty interests cannot be defeated by a statutory definition that may serve M.F.'s

personal interest in the present case, but would significantly harm parents in most cases.

The failure to involve a parent at the front end of a dependency case is contrary to the legislative mandate to provide speedy permanency for children and could lead to unnecessary delay. If a presumed father was not considered a parent until a final adjudication, permanency planning could be delayed for the child. RCW 13.34.180(1)(d) requires all reasonably available services must have been offered or provided to the parent. Delay in adjudicating whether a presumed parent is a “biological” parent for purposes of dependency case involvement would delay both the provision of necessary services and necessary permanency for the child, whether that be reunification or termination of parental rights. The harmonization of RCW 13.04.011(5) is essential to fulfilling legislative intent and constitutional mandates.

5. Harmonization of RCW 13.04.011(5) is consistent with pending legislation

In closing argument at the dependency fact finding hearing, M.F.’s attorney stated: “...quite honestly I believe that the legislature should address the law and make it clear because it’s not quite – it’s a simple legal argument.” RP 54. This session, the Legislature is doing just that. Substitute House Bill 1815 proposes to amend the statute in question and

revise the definition of parent for purposes of Chapters 13.04 and 13.34 RCW. Substitute H.B. 1815, 65th Leg., Reg. Sess., at 5 (Wash. 2017). The legislation would eliminate the current definition of parent for purposes of Chapter 13.34 RCW that is in RCW 13.04.011(5) and add new clarifying language to RCW 13.34.030 providing as follows:

“Parent” means the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian Tribe.

Substitute H.B. 1815, 65th Leg., Reg. Sess., at 5 (Wash. 2017). This proposed legislation passed out of the House and has been referred to the Senate.

The definition of “parent” in RCW 13.04.011(5) must be interpreted in conjunction with Chapters 13.32A, 13.34, 26.26, and 26.33 RCW. To limit the definition of a parent under Chapter 13.34 RCW to biological or adoptive parents would lead to absurd and unintended consequences for children and families. The trial court properly found I.F. dependent pursuant to RCW 13.34.030(6)(c) with respect to M.F.’s interests, and the order should be affirmed.

B. The Trial Court Did Not Abuse Its Discretion in Denying the Father's Motion for DNA Testing; There Was No Denial of Due Process Where the Father Simply Failed to Follow Statutory Procedure

It is undisputed that M.F. is I.F.'s presumed father. CP 71 (Unchallenged FF 2.2.1). The Uniform Parentage Act, set forth in Chapter 26.26 RCW, provides a legal process to disestablish paternity. *See* RCW 26.26.500-.630. M.F. provides no support for his argument that his due process rights were denied simply because the juvenile court advised him to file a disestablishment action in superior court. The proper forum for M.F. to seek disestablishment of his paternity is in superior court, not the juvenile court. In denying M.F.'s motion for DNA testing, the juvenile court advised him to file a petition to disestablish paternity in superior court, but M.F. took no steps to do so. His failure to act does not equate with a denial of due process. The trial court reasonably and properly exercised its discretion in denying the motion for DNA testing, and the order should be affirmed.

1. In denying M.F.'s motion for DNA testing, the juvenile court relied upon the supported facts, applied the correct legal standard, and reached a reasonable result

A trial court abuses its discretion when it exercises that discretion based on untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A discretionary decision rests on "untenable grounds" or is based on "untenable reasons" if the trial court

relies on unsupported facts or applies the wrong legal standard. *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006), citing *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). Whether an abuse of discretion has occurred will depend on the particular facts and circumstances of each case. *Hampson v. Ramer*, 47 Wn. App. 806, 813, 737 P.2d 298 (1987).

An appellate court will find an abuse of discretion only when no reasonable person would take the position adopted by the court. *In re Dependency of J.H.*, 117 Wn.2d 460, 472, 815 P.2d 1380 (1991). Here, the trial court applied the correct legal standard and reached a reasonable result; there was no abuse of discretion.

Parentage is presumed when a child is born during a marriage. RCW 26.26.116(1)(a). A presumption of parentage may only be rebutted through an adjudication under RCW 26.26.500-.630. RCW 26.26.116(3). A court order, not simply genetic testing, is required to overcome the presumption of paternity. *Marriage of Thier*, 67 Wn. App. at 947.

Juvenile courts have exclusive original jurisdiction over all proceedings involving a child alleged or found to be dependent. RCW 13.04.030(1)(b). The juvenile court has concurrent original jurisdiction with family court over child custody proceedings and parenting plans or residential schedules. RCW 13.04.030(3). The superior courts are

authorized to adjudicate parentage under Chapter 26.26 RCW. RCW 26.26.031. The proper forum for M.F. to pursue an action to disestablish himself as I.F.'s presumed father was superior court.

The juvenile court advised M.F. to file a Petition to Disestablish Paternity in the superior court to be heard on the family law docket. RP 55-56. The juvenile court ruled that DNA testing, for purposes of determining parentage, is within the purview of the family court, not dependency court. CP 156. In denying M.F.'s motion, the juvenile court reasonably exercised its discretion.

2. M.F. fails to demonstrate manifest error in raising his due process challenge

If no objection is raised at trial, RAP 2.5(a)(3) permits a party to assert constitutional error for the first time on appeal provided the party demonstrates manifest error. *In re Dependency of J.A.F.*, 168 Wn. App. 653, 659, 278 P.3d 673 (2012). To demonstrate manifest error, M.F. must show actual prejudice, or that "the asserted error had practical and identifiable consequences in the trial." *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009).

Even if the motion had been granted, and a DNA test showed that M.F. was not I.F.'s biological father, the DNA test would have had no identifiable consequence at trial. A court order was required to disestablish

paternity. M.F. would have had to pursue a parentage action and obtained a court order to disestablish his paternity, following the statutory procedure set forth in RCW 26.26.500-.630. Under these circumstances, M.F. is unable to show the denial of his motion had practical, identifiable consequences resulting in actual prejudice that impacted the trial's outcome.

3. Application of the three-part *Mathews v. Eldridge* test demonstrates the Department met due process requirements

M.F. argues the failure to allow him to pursue disestablishment of paternity in the dependency case and the subsequent entry of a dependency order violated his due process rights. Appellant's Brief at 6. Three elements must be analyzed and balanced when evaluating the adequacy of a procedure: (1) the private interest at stake, (2) the risk that the procedure used will lead to an erroneous decision, and (3) the government's interest in the procedure used and the fiscal or administrative burden of substitute or additional procedural safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976).

a. The private interest at stake

The first *Mathews* factor is "the private interest that will be affected by the official action." *Mathews*, 424 U.S. at 335. A parent has an interest in an accurate determination of paternity. A parent also has a

constitutionally protected right to the care, custody, and companionship of the parent's minor child. *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1980)). "Despite the numerous burdens and benefits of being a father...it is the child who has the most at stake in a paternity proceeding." *State v. Santos*, 104 Wn.2d 142, 143, 702 P.2d 1179 (1985). The child also has "the right to establish a strong, stable, safe, and permanent home in a timely manner." *In re Dependency of A.G.*, 93 Wn. App. 268, 279, 968 P.2d 424 (1998). There are significant private interests at stake.

b. There is little risk of an erroneous decision

The second *Mathews* factor is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews v. Eldridge*, 424 U.S. at 335. No risk of erroneous deprivation results from requiring M.F. to pursue the existing statutory process to seek to disestablish paternity. The matter would be heard in the superior court, in family court, by a judge familiar with such matters. M.F. is unable to demonstrate how the use of this existing procedure could lead to an erroneous decision. On balance, the procedure used fully protected the father's procedural due process rights.

c. The governmental interest

The third *Mathews* factor is “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. at 335. The Department has an interest in engaging fathers, including presumed fathers, as early in the dependency process as possible. While the Department has an interest in fulfilling its statutory duties related to juvenile dependency cases, paternity disestablishment cases fall outside the realm of child welfare expertise. It is unreasonable that the Department, already burdened with heavy caseloads, should assume the financial or administrative responsibility and burden of handling paternity disestablishment cases when a statutory procedure already exists.

When the *Mathews* factors are weighed, the procedure established by existing statutes satisfies due process. This procedure appropriately weighs the competing interests and does not substantially increase the risk of an erroneous decision, protecting the father’s due process rights.

M.F. demonstrated the capability to pursue modification of the parenting plan and to seek entry of temporary custody orders. See Ex. 2-4. Yet he failed to act to file an action to disestablish his paternity. This failure to act does not rise to the level of a due process violation. M.F. had an available avenue to pursue disestablishment of paternity case and the

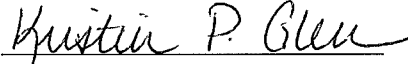
subsequent entry of a dependency order did not violate his due process rights. This Court should decline to review the issue.

V. CONCLUSION

For the reasons set forth above, the Department respectfully requests this Court affirm the order establishing I.F. as a dependent child.

RESPECTFULLY SUBMITTED this 23rd day of March, 2017.

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I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 23rd day of March, 2017, at Port Angeles, WA.



VIVIAN HALICOUT
Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL
March 23, 2017 - 1:18 PM
Transmittal Letter

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